

REMARKS

Applicant respectfully requests reconsideration and allowance of the subject application. Claims 1-24, 26, 31-33, 35, and 36 are pending in this application.

35 U.S.C. § 102

Claims 1-3, 8-11, 14-16, 18-20, and 22-24 stand rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,530,752 to Rubin (hereinafter "Rubin"). Applicant respectfully submits that claims 1-3, 8-11, 14-16, 18-20, and 22-24 are not anticipated by Rubin.

Rubin is directed to systems and methods for protecting software from unlicensed copying and use (see, Title). In Rubin, an Encryption Conversion Process (ECP) removes lines of code from an object code module and replaces the removed lines of code with a privileged request which, if executed, will cause a trappable error (see, col. 5, lines 10-17). The ECP also encrypts the removed lines of code and stores the encrypted lines of code within a data area (see, col. 5, lines 21-22). An Executable Object Code System Program which includes the object code module with such encrypted lines of code is thus disabled, and during the execution of the Executable Object Code System Program, if a branching instruction to the object module is encountered, a trappable error will occur (see, col. 6, lines 17-22 and col. 6, line 65- col. 7, line 1). Similarly, the trappable error will produce an error message informing the end user that he does not have a valid license to utilize the object module (see, col. 7, lines 1-3).

With respect to claim 1, claim 1 is directed to an installation module comprising:

- an encrypted software module;
- a decryption key to decrypt the encrypted software module;
- and
- an executive for using the decryption key to decrypt the encrypted software module when at least one of a set of trigger files is stored on a computing system, wherein each of the trigger files indicates authorization to install the encrypted software module.

Applicant respectfully submits that Rubin does not disclose an executive for using the decryption key to decrypt the encrypted software module when at least one of a set of trigger files is stored on a computing system, wherein each of the trigger files indicates authorization to install the encrypted software module as recited in claim 1.

In the April 14 Office Action at pp. 2-3, it was asserted that:

Rubin discloses . . . the transformer (setup program)(Col. 6, lines 2-6), which meets the limitation of an executive for using the decryption key to decrypt the encrypted software module, reads the version number from the Executable Object Code System Program to identify what program the user is licensed to use (Col. 6, lines 25-53), which meets the limitation at least one of a set of trigger files is stored on a computing system, wherein each of the trigger files indicates authorization to install the encrypted software module.

Applicant respectfully disagrees with this assertion, and respectfully submits that the version number of Rubin does not disclose the set of trigger files as recited in claim 1.

Rubin discusses that the Transformer 400 maintains previously retrieved licensed version numbers in temporary storage (see, col. 6, lines 37-39). If a version numbers has not previously been retrieved, then Transformer 400 requests and receives from License Manager 402 the latest version number for the object

module for which the user is licensed (see, col. 6, lines 44-49). However, Applicant respectfully submits that version numbers are not trigger files. Version numbers are simply that: numbers. Applicant respectfully submits that a number is not a file, and thus that the version numbers of Rubin do not disclose the set of trigger files as recited in claim 1.

Furthermore, Applicant respectfully submits that Rubin does not disclose an installation module comprising an encrypted software module, a decryption key, and an executive as recited in claim 1. Nowhere in Rubin is there any mention or discussion of Transformer 400 being part of the same installation module as the encrypted object code module. As such, Applicant respectfully submits that Rubin cannot disclose an encrypted software module, a decryption key, and an executive all as part of the same installation module as recited in claim 1.

MPEP §2131 states that, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant respectfully submits that the rejection of claim 1 does not meet this standard. As there is not even a mention in Rubin of Transformer 400 making its determination based on files rather than version numbers, or of Transformer 400 being part of the same installation module as the encrypted object code module, Applicant respectfully submits that the standard for anticipation under 35 U.S.C. §102 is not satisfied by Rubin with respect to claim 1.

For at least these reasons, Applicant respectfully submits that claim 1 is not anticipated by Rubin.

Given that claim 8 depends from claim 1, Applicant respectfully submits that claim 8 is likewise allowable over Rubin for at least the reasons discussed above with respect to claim 1.

With respect to claim 2, Applicant respectfully submits that, similar to the discussion above regarding claim 1, Rubin does not disclose an executive for decrypting the encrypted software module with the key when at least one of a set of trigger files is stored on a computing system, or an installation module comprising an encrypted software module, a key, and an executive as recited in claim 2. For at least these reasons, Applicant respectfully submits that claim 2 is not anticipated by Rubin.

With respect to claim 3, claim 3 depends from claim 2 and Applicant respectfully submits that claim 3 is not anticipated by Rubin due to its dependency on claim 2. Furthermore, Applicant respectfully submits that Rubin does not disclose a database for identifying the trigger files, wherein the database includes the key used by the executive for decrypting the encrypted software module as recited in claim 3.

Rubin describes a Key 305 that is in data area 205 of the object code module (see, col. 5, lines 26-31). Transformer 400 retrieves Key 305 from data area 205 to reproduce the originally removed lines of object code (see, col. 7, lines 10-14). However, nowhere is there any mention or discussion in Rubin of Key 305 being included in any database for identifying trigger files. Although Applicant maintains that the version numbers of Rubin are not trigger files as

discussed above, assuming solely for the sake of argument that version numbers of Rubin were trigger files, then Rubin would need to disclose a database for identifying the version numbers, with the database also including the Key 305. As there is no mention or discussion of such a database in Rubin, Applicant respectfully submits that Rubin cannot disclose a database for identifying the trigger files, wherein the database includes the key used by the executive for decrypting the encrypted software module as recited in claim 3.

For at least these reasons, Applicant respectfully submits that claim 3 is not anticipated by Rubin.

With respect to claim 9, Applicant respectfully submits that, similar to the discussion above regarding claim 1, Rubin does not disclose an executive for decrypting the encrypted software module with the decryption key when at least one of a set of trigger files is stored on a computing system, or an installation module comprising an encrypted software module, a decryption key, and an executive as recited in claim 9. For at least these reasons, Applicant respectfully submits that claim 9 is not anticipated by Rubin.

Given that claims 10, 11, and 14 depend from claim 9, Applicant respectfully submits that claims 10, 11, and 14 are likewise allowable over Rubin for at least the reasons discussed above with respect to claim 9.

With respect to claim 15, Applicant respectfully submits that, similar to the discussion above regarding claim 1, Rubin does not disclose decrypting an encrypted software module using a decryption key when at least one of a set of trigger files is stored on a computing system as recited in claim 15. For at least

these reasons, Applicant respectfully submits that claim 15 is not anticipated by Rubin.

With respect to claim 16, claim 16 depends from claim 15 and Applicant respectfully submits that claim 16 is not anticipated by Rubin due to its dependency on claim 15. Furthermore, Applicant respectfully submits that Rubin does not disclose wherein the decrypting step includes determining whether a prior version of the encrypted software module is stored on a computing system as recited in claim 16.

Rubin describes that if the licensed version number (accessed by Transformer 400 from temporary storage or received from License Manager 402) is less than the object code module's Version Number 303, then the user is not licensed to utilize the object code module and an error message will be produced informing the end user that he does not have a valid license to utilize the object code module (see, col. 6, line 37 – col. 7, line 3). The Version Number 303 is part of the object code module (see, col. 5, lines 28-31, and Fig. 3). Rubin also describes that if the licensed version number is greater than or equal to the object code module's Version Number 303, then the object code module is decrypted/enabled (see, col. 7, lines 4-7).

Thus, Rubin describes determining whether to decrypt the object code module based on version numbers (the Version Number 303 in the object code module, as compared to the licensed version number). However, there is no mention or discussion in Rubin of determining whether a prior version of the object code module is stored on a computing system. Rubin only discusses comparing the Version Number 303 to the licensed version number, not any type

of checking whether a prior version of the object code module is actually stored on a computing system. As such, Applicant respectfully submits that Rubin cannot disclose wherein the decrypting step includes determining whether a prior version of the encrypted software module is stored on a computing system as recited in claim 16.

For at least these reasons, Applicant respectfully submits that claim 16 is not anticipated by Rubin.

Given that claims 19, 20, 22, and 23 depend, directly or indirectly, from claim 15, Applicant respectfully submits that claims 19, 20, 22, and 23 are likewise allowable over Rubin for at least the reasons discussed above with respect to claim 15.

With respect to claim 18, Applicant respectfully submits that, similar to the discussion above regarding claim 1, Rubin does not disclose decrypting an encrypted software module when at least one of a set of trigger files is stored on a computing system as recited in claim 18. For at least these reasons, Applicant respectfully submits that claim 18 is not anticipated by Rubin.

With respect to claim 24, Applicant respectfully submits that, similar to the discussion above regarding claims 1 and 16, Rubin does not disclose to decrypt an encrypted software module when a trigger file is stored on a computing system, wherein the trigger file comprises a prior version of the encrypted software module as recited in claim 24. For at least these reasons, Applicant respectfully submits that claim 24 is not anticipated by Rubin.

Applicant respectfully requests that the §102 rejections be withdrawn.

35 U.S.C. § 103

Claims 4, 6, 12, and 21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of U.S. Patent No. 6,058,478 to Davis (hereinafter "Davis"). Applicant respectfully submits that claims 4, 6, 12, and 21 are not obvious over Rubin in view of Davis.

Claims 4, 6, 12, and 21 depend from independent claims 2, 1, 9, and 15, respectively. Applicant respectfully submits that claims 4, 6, 12, and 21 are allowable over Rubin due to their dependencies on one of claims 2, 1, 9, and 15 discussed above. Davis is not cited as curing, and does not cure, the deficiencies of Rubin discussed above with respect to claims 2, 1, 9, and 15. For at least these reasons, Applicant respectfully submits that claims 4, 6, 12, and 21 are not obvious over Rubin in view of Davis.

Claims 7 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of Davis and further in view of U.S. Patent No. 5,825,890 to Elgamal et al. (hereinafter "Elgamal"). Applicant respectfully submits that claims 7 and 13 are not obvious over Rubin in view of Davis and Elgamal.

Claims 7 and 13 depend from claims 6 and 12, respectively. Applicant respectfully submits that claims 7 and 13 are allowable over Rubin in view of Davis due to their dependencies on one of claims 6 and 12 discussed above. Elgamal is not cited as curing, and does not cure, the deficiencies of Rubin in view of Davis discussed above with respect to claims 6 and 12. For at least these reasons, Applicant respectfully submits that claims 7 and 13 are not obvious over Rubin in view of Davis and Elgamal.

Claims 5 and 17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of U.S. Patent No. 5,199,073 to Scott (hereinafter "Scott"). Applicant respectfully submits that claims 5 and 17 are not obvious over Rubin in view of Scott.

Claims 5 and 17 depend from independent claims 2 and 15, respectively. Applicant respectfully submits that claims 5 and 17 are allowable over Rubin due to their dependencies on one of claims 2 and 15 discussed above. Scott is not cited as curing, and does not cure, the deficiencies of Rubin discussed above with respect to claims 2 and 15. For at least these reasons, Applicant respectfully submits that claims 5 and 17 are not obvious over Rubin in view of Scott.

Claims 26, 31, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of U.S. Patent No. 6,075,862 to Yoshida et al. (hereinafter "Yoshida"). Applicant respectfully submits that claims 26, 31, and 33 are not obvious over Rubin in view of Yoshida.

With respect to claim 26, claim 26 depends from claim 24. Applicant respectfully submits that claim 26 is allowable over Rubin due to its dependency on claim 24 discussed above. Yoshida is not cited as curing, and does not cure, the deficiencies of Rubin discussed above with respect to claim 24. For at least these reasons, Applicant respectfully submits that claim 26 is not obvious over Rubin in view of Yoshida.

With respect to claim 31, claim 31 recites, in part:

determining, based on the checking, which of multiple versions of a software module to install on the computer, wherein a first version of the multiple versions has greater than a threshold strength encryption, and wherein a second version of the multiple versions has not greater than the threshold strength encryption;

Applicant respectfully submits that no such determining is disclosed or suggested in either Rubin or Yoshida.

As noted in the April 14 Office Action at p. 7, Rubin does not disclose the software package containing multiple versions of software programs. Thus, Rubin cannot disclose or suggest the determining of claim 31.

The cited portion of Yoshida, on the other hand, discusses a software vendor packaging a non-encrypted demonstration version of software for demonstrating the encrypted software content (see, col. 2, lines 6-13). This allows the user to try and see if the software is worth purchasing before actually purchasing the software (see, col. 2, lines 13-16). The user receives a decryption key in exchange for the payment of the software usage charge for a desired software, and installs this software into a hard disk device of his own computer by decrypting the encrypted software content using the received decryption key (see, col. 5, lines 17-21).

Thus, it can be seen that Yoshida is directed to a system in which there are two versions of software: a demonstration version and a non-demonstration (encrypted) version. Applicant respectfully submits that the mere disclosure of a demonstration version and a non-demonstration version of software does not make any disclosure or suggestion of two versions having two different strength encryptions. Nowhere in Yoshida is there any mention or discussion of the two versions of software being versions that have two different strength encryptions as recited in claim 31. Absent such mention or discussion, Applicant respectfully submits that Yoshida cannot disclose or suggest the determining of claim 31.

For at least these reasons, Applicant respectfully submits that claim 31 is not obvious over Rubin in view of Yoshida.

Given that claim 33 depends from claim 31, Applicant respectfully submits that claim 33 is likewise allowable over Rubin in view of Yoshida for at least the reasons discussed above with respect to claim 31.

Claim 32 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of Yoshida and further in view of U.S. Patent No. 6,327,660 to Patel (hereinafter "Patel '660"). Applicant respectfully submits that claim 32 is not obvious over Rubin in view of Yoshida and Patel '660.

Claim 32 depends from claim 31. Applicant respectfully submits that claim 32 is allowable over Rubin in view of Yoshida due to its dependency on claim 31 discussed above. Patel '660 is not cited as curing, and does not cure, the deficiencies of Rubin in view of Yoshida discussed above with respect to claim 31. For at least these reasons, Applicant respectfully submits that claim 32 is not obvious over Rubin in view of Yoshida and Patel '660.

Claims 35 and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rubin in view of Davis and further in view of U.S. Patent No. 6,192,474 to Patel et al. (hereinafter "Patel '474"). Applicant respectfully submits that claims 35 and 36 are not obvious over Rubin in view of Yoshida and Patel '474.

Claims 35 and 36 depend from claims 1 and 2, respectively. Applicant respectfully submits that claims 35 and 36 are allowable over Rubin due to their dependencies on one of claims 1 and 2 discussed above. Yoshida and Patel '474 not cited as curing, and do not cure, the deficiencies of Rubin discussed above

with respect to claims 1 and 2. For at least these reasons, Applicant respectfully submits that claims 35 and 36 are not obvious over Rubin in view of Yoshida and Patel '474.

Applicant respectfully requests that the §103 rejections be withdrawn.

Conclusion

Claims 1-24, 26, 31-33, 35, and 36 are in condition for allowance. Applicant respectfully requests reconsideration and issuance of the subject application. Should any matter in this case remain unresolved, the undersigned attorney respectfully requests a telephone conference with the Examiner to resolve any such outstanding matter.

Respectfully Submitted,

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